

## Office of the Secretary of Defense

## § 310.19

(B) The date of the appeal determination;

(C) The name, title, and signature of the appeal authority; and

(D) A statement informing the applicant of his or her right to seek judicial relief.

(ii) If the appeal is granted, notify the individual and provide access to the material to which access has been granted.

(3) The written appeal notification granting or denying access is the final Component action as regards access.

(4) The individual shall file any appeal from denial of access within no less than 60 calendar days of receipt of the denial notification.

(5) Process all appeals within 30 days of receipt unless the appeal authority determines that a fair and equitable review cannot be made within that period. Notify the applicant in writing if additional time is required for the appellate review. The notification must include the reasons for the delay and state when the individual may expect an answer to the appeal.

(e) *Denial of appeals by failure to act.* A requester may consider his or her appeal formally denied if the appeal authority fails:

(1) To act on the appeal within 30 days;

(2) To provide the requester with a notice of extension within 30 days; or

(3) To act within the time limits established in the Component's notice of extension (see paragraph (d)(5) of this section).

(f) *Denying access to OPM records held by the DoD Components.* (1) The records in all systems of records maintained in accordance with the OPM Government-wide system notices are technically only in the temporary custody of the Department of Defense.

(2) All requests for access to these records must be processed in accordance with 5 CFR part 297 as well as applicable Component procedures.

(3) When a DoD Component refuses to grant access to a record in an OPM system, the Component shall advise the individual that his or her appeal must be directed to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E

Street, NW., Washington, DC, in accordance with the procedures of 5 CFR part 297.

### § 310.19 Amendment of records.

(a) *Individual review and correction.* Individuals are encouraged to review the personal information being maintained about them by the DoD Components periodically and to avail themselves of the procedures established by this part and other Regulations to update their records.

(b) *Amending records.* (1) An individual may request the amendment of any record contained in a system of records pertaining to him or her unless the system of records has been exempted specifically from the amendment procedures of this part under paragraph (b) of § 310.26. Normally, amendments under this part are limited to correcting factual matters and not matters of official judgment, such as performance ratings, promotion potential, and job performance appraisals.

(2) While a Component may require that the request for amendment be in writing, this requirement shall not be used to discourage individuals from requesting valid amendments or to burden needlessly the amendment process.

(3) A request for amendment must include:

(i) A description of the item or items to be amended;

(ii) The specific reason for the amendment;

(iii) The type of amendment action sought (deletion, correction, or addition); and

(iv) Copies of available documentary evidence supporting the request.

(c) *Burden of proof.* The applicant must support adequately his or her claim.

(d) *Identification of requesters.* (1) Individuals may be required to provide identification to ensure that they are indeed seeking to amend a record pertaining to themselves and not, inadvertently or intentionally, the record of others.

(2) The identification procedures shall not be used to discourage legitimate requests or to burden needlessly or delay the amendment process. (See paragraph (c) of § 310.17.)

(e) *Limits on attacking evidence previously submitted.* (1) The amendment process is not intended to permit the alteration of records presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(2) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination under this part, he or she may challenge the accuracy of the recording of that action.

(f) *Sufficiency of a request to amend.* Consider the following factors when evaluating the sufficiency of a request to amend:

(1) The accuracy of the information; and

(2) The relevancy, timeliness, completeness, and necessity of the recorded information.

(g) *Time limits.* (1) Provide written acknowledgement of a request to amend within 10 working days of its receipt by the appropriate systems manager. There is no need to acknowledge a request if the action is completed within 10 working days and the individual is so informed.

(2) The letter of acknowledgement shall clearly identify the request and advise the individual when he or she may expect to be notified of the completed action.

(3) Only under the most exceptional circumstances shall more than 30 days be required to reach a decision on a request to amend. Document fully and explain in the Privacy Act case file (see paragraph (p) of this section) any such decision that takes more than 30 days to resolve.

(h) *Agreement to amend.* If the decision is made to grant all or part of the request for amendment, amend the record accordingly and notify the requester.

(i) *Notification of previous recipients.* (1) Notify all previous recipients of the record, as reflected in the disclosure accounting records, that an amend-

ment has been made and the substance of the amendment. Recipients who are known to be no longer retaining the information need not be advised of the amendment. All DoD Components and Federal agencies known to be retaining the record or information, even if not reflected in a disclosure record, shall be notified of the amendment. Advise the requester of these notifications.

(2) Honor all requests by the requester to notify specific Federal agencies of the amendment action.

(j) *Denying amendment.* If the request for amendment is denied in whole or in part, promptly advise the individual in writing of the decision to include:

(1) The specific reason and authority for not amending;

(2) Notification that he or she may seek further independent review of the decision by the Head of the DoD Component or his or her designee;

(3) The procedures for appealing the decision citing the position and address of the official to whom the appeal shall be addressed; and

(4) Where he or she can receive assistance in filing the appeal.

(k) *DoD Component appeal procedures.* Establish procedures to ensure the prompt, complete, and independent review of each amendment denial upon appeal by the individual. These procedures must ensure:

(1) The appeal with all supporting materials both that furnished the individual and that contained in Component records is provided to the reviewing official; and

(2) If the appeal is denied completely or in part, the individual is notified in writing by the reviewing official that:

(i) The appeal has been denied and the specific reason and authority for the denial;

(ii) The individual may file a statement of disagreement with the appropriate authority and the procedures for filing this statement;

(iii) If filed properly, the statement of disagreement shall be included in the records, furnished to all future recipients of the records, and provided to all prior recipients of the disputed records who are known to hold the record; and

## Office of the Secretary of Defense

## § 310.19

(iv) The individual may seek a judicial review of the decision not to amend.

(3) If the record is amended, ensure:

(i) The requester is notified promptly of the decision;

(ii) All prior known recipients of the records who are known to be retaining the record are notified of the decision and the specific nature of the amendment (see (l) of this section); and

(iii) The requester is notified which DoD Components and Federal agencies have been told of the amendment.

(4) Process all appeals within 30 days unless the appeal authority determines that a fair review cannot be made within this time limit. If additional time is required for the appeal, notify the requester, in writing, of the delay, the reason for the delay, and when he or she may expect a final decision on the appeal. Document fully all requirements for additional time in the Privacy Case File. (See paragraph (p) of this section.)

(1) *Denying amendment of OPM records held by the DoD Components.* (1) The records in all systems of records controlled by the OPM Government-wide system notices are technically only temporarily in the custody of the Department of Defense.

(2) All requests for amendment of these records must be processed in accordance with 5 CFR part 297. The Component denial authority may deny a request. However, when an amendment request is denied, the DoD Component shall advise the individual that his or her appeal must be directed to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street, Washington, DC 20415 in accordance with the procedures of 5 CFR 297.

(m) *Statements of disagreement submitted by individuals.* (1) If the appellate authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement setting forth his or her reasons for disagreeing with the decision not to amend.

(2) If an individual chooses to file a statement of disagreement, annotate the record to indicate that the state-

ment has been filed (see paragraph (n) of this section).

(3) Furnish copies of the statement of disagreement to all DoD Components and Federal agencies that have been provided copies of the disputed information and who may be maintaining the information.

(n) *Maintaining statements of disagreement.* (1) When possible, incorporate the statement of disagreement into the record.

(2) If the statement cannot be made a part of the record, establish procedures to ensure that it is apparent from the records a statement of disagreement has been filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed.

(3) Automated record systems that are not programmed to accept statements of disagreement shall be annotated or coded so they clearly indicate that a statement of disagreement is on file, and clearly identify the statement with the disputed information in the system.

(4) Provide a copy of the statement of disagreement whenever the disputed information is disclosed for any purpose.

(o) *The DoD Component statement of reasons for refusing to amend.* (1) A statement of reasons for refusing to amend may be included with any record for which a statement of disagreement is filed.

(2) Include in this statement only the reasons furnished to the individual for not amending the record. Do not comment on or respond to comments contained in the statement of disagreement. Normally, both statements are filed together.

(3) When disclosing information for which a statement of reasons has been filed, a copy of the statement may be released whenever the record and the statement of disagreement are disclosed.

(p) *Privacy case files.* (1) Establish a separate Privacy case file to retain the documentation received and generated during the amendment or access process.

(2) The Privacy case file shall contain as a minimum:

## § 310.20

## 32 CFR Ch. I (7–1–09 Edition)

(i) The request for amendment and access.

(ii) Copies of the DoD Component's reply granting or denying the request;

(iii) Any appeals from the individual;

(iv) Copies of the action regarding the appeal with supporting documentation that is not in the basic file; and

(v) Any other correspondence generated in processing the appeal, to include coordination documentation.

(3) Only the items listed in paragraphs (p)(4) and (p)(5) of this section may be included in the system of records challenged for amendment or for which access is sought. Do not retain copies of the original record in the basic record system if the request for amendment is granted and the record has been amended.

(4) The following items relating to an amendment request may be included in the disputed record system:

(i) Copies of the amended record.

(ii) Copies of the individual's statement of disagreement (see paragraph (m) of this section).

(iii) Copies of the Component's statement of reasons for refusing to amend (see paragraph (o) of this section).

(iv) Supporting documentation submitted by the individual.

(5) The following items relating to an access request may be included in the basic records system:

(i) Copies of the request;

(ii) Copies of the Component's action granting total or partial access. (NOTE: A separate Privacy case file need not be created in such cases.)

(iii) Copies of the Component's action denying access.

(iv) Copies of any appeals filed.

(v) Copies of the reply to the appeal.

(6) Privacy case files shall not be furnished or disclosed to anyone for use in making any determination about the individual other than determinations made under this part.

### § 310.20 Reproduction fees.

(a) *Assessing fees.* (1) Charge the individual only the direct cost of reproduction.

(2) Do not charge reproduction fees if copying is:

(i) The only means to make the record available to the individual (for example, a copy of the record must be

made to delete classified information); or

(ii) For the convenience of the DoD Component (for example, the Component has no reading room where an individual may review the record, or reproduction is done to keep the original in the Component's file).

(iii) No fees shall be charged when the record may be obtained without charge under any other Regulation, Directive, or statute.

(iv) Do not use fees to discourage requests.

(b) *No minimum fees authorized.* Use fees only to recoup direct reproduction costs associated with granting access. Minimum fees for duplication are not authorized and there is no automatic charge for processing a request.

(c) *Prohibited fees.* Do not charge or collect fees for:

(1) Search and retrieval of records;

(2) Review of records to determine releasability;

(3) Copying records for the DoD Component convenience or when the individual has not specifically requested a copy;

(4) Transportation of records and personnel; or

(5) Normal postage.

(d) *Waiver of fees.* (1) Normally, fees are waived automatically if the direct costs of a given request are less than \$30. This fee waiver provision does not apply when a waiver has been granted to the individual before, and later requests appear to be an extension or duplication of that original request. A DoD Component may, however, set aside this automatic fee waiver provision when, on the basis of good evidence, it determines the waiver of fees is not in the public interest.

(2) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis.

(e) *Fees for members of Congress.* Do not charge members of Congress for copying records furnished even when the records are requested under the Privacy Act on behalf of a constituent (See § 310.22(i)). When replying to a constituent inquiry and the fees involved are substantial, consider suggesting to the Congressman that the constituent can obtain the information directly by